IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

WP(C).No. 31773 of 2006(G)

PETITIONERS:

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1. SINDHU SHIBU,
   KARTHIKA COMMUNICATION, KARTHIKA, KADAKKAVOOR,
   TRIVANDRUM-695 306.

2. HASHIM SAINUDEEN,
   KERALA HOUSE, PUTHEN BUNGLOW, PAZHAKUTTY,
   NEDUMANGAD, TRIVANDRUM.

3. PRABHAVATHY THANKAMMA,
   HIGHNES TRAVELS & COMMUNICATION, PEROORKADA,
   THIRUVANANTHAPURAM.

4. SAIJU PRABHAKAR,
   PRABHATH COMMUNICATION, NEAR KSRTC BUS STAND,
   TRIVANDRUM.

5. MANOJ,
   HOTEL JANATHA, OPP. CASUALTY, MEDICAL COLLEGE,
   TRIVANDRUM.

6. JAYACHANDRAN,
   JSJP MARKETING, POOJAPPURA JN.,TRIVANDRUM.

7. B. SUNIL,
   LALITHAS OFFSET PRINTERS, SIVAGIRI JN.,
   VARKALA, TRIVANDRUM-695 141.

8. SATHEESH KUMAR,
   ALSHAHAMA, ALSHAHAMA STUDIO VIDEO, EDAVA,
   TRIVANDRUM.

9. S. MANIKANTAN,
   SREELEKSHMI STORES, LEKSHMI NILAYAM, 41/852,
   PUTHENKOTTU, MANACAUD, TRIVANDRUM.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS:
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1. STATE OF KERALA,
   REPRESENTED BY SECRETARY (TAXES), DEPARTMENT OF
   REVENUE, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM.

3. THE ASST. COMMISSIONER OF SALE TAX,
   SALES TAX OFFICE, SPECIAL CIRCLE-I,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).NO.31773 of 2006-G

Dated this the 30th day of November, 2006

JUDGMENT

The petitioners challenge Exts.P10, P10(a) to P10(h) notices, issued by the Assessing Officer, proposing to assess sales tax dues for the on-line lottery tickets sold by them, for the financial years 2003 to 2006. The petitioners submit that, in view of the decision of the Apex Court in Sunrise Associates Vs. Govt. of NCT of Delhi & Ors. (JT 2006 (5) SC 168) and also the clarification order issued by the Apex Court, no sales tax could be levied, demanded or collected. The petitioners submit that they have filed objections to those notices. But, the Assessing Officer is proceeding with the assessment proceedings. Hence, this Writ Petition challenging those notices.

2. I heard the Special Government Pleader (Taxes) for the respondents also.

3. Normally, this Court will not interfere with any notice issued under the Kerala General Sales Tax Act. But, I feel that having regard to the facts of the case, prima facie the entire proceedings appears to be a futile exercise, unless the

Government bring in some legislation to support the levy. But, I am not expressing any final opinion about the assessment proceedings. Having regard to the facts of the case, the Assessing Officer is directed to hear the petitioners, consider their objections and pass speaking orders on them. Only thereafter, further proceedings, if any, for assessment of the sales tax liability of the petitioners, shall be taken.

The Writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE.

MS